

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 28438 of 2006(I)

SC.990/2001 of SPECIAL COURT FOR ABKARI CASWES, NEYYATTINKARA

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PETITIONER:

SASIKUMAR,
DHANYA BHAVAN, PAMBARAMKAVU,
AMBOORI P.O., NEYYATTINKARA.

BY ADV. SRI.C.K.MOHANAN

RESPONDENTS:

1. STATE OF KERALA,
REP. BY PROSECUTION DIRECTOR,
HIGH COURT OF KERALA,
ERNAKULAM.
2. EXCISE INSPECTOR,
AMARAVILA EXCISE OFFICE,
AMARAVILA P.O.
3. SUPERINTENDENT OF POLICE,
VIGILANCE OFFICE (EXCISE),
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 28438 of 2006(I)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 – TRUE PHOTO COPY OF THE REPRESENTATION SUBMITTED BEFORE THE CHIEF INFORMATION COMMISSIONER DATED 4/7/2006.

EXT.P2 – TRUE PHOTO COPY OF THE INTIMATION ISSUED BY THE VIGILANCE OFFICER DATED 11/8/06.

EXT.P3 – TRUE COPY OF INTIMATION ISSUED BY THE 3RD RESPONDENT DATED 16/8/06.

//TRUE COPY//

R. BASANT, J.

W.P.(C) NO.28438 OF 2006-I

Dated this the 28th day of May, 2007

JUDGMENT

The facts of this case are indeed strange. The petitioner faces indictment in a prosecution under the Kerala Abkari Act. Investigation is complete. Final report has been filed. Cognizance has been taken. Case has been committed. Trial has commenced. The matter rests at the stage of 313 examination of the accused.

2. The petitioner's wife appears to have filed a complaint before the Chief Minister of Kerala and on that complaint being forwarded to the 3rd respondent, the 3rd respondent informed the petitioner's wife that the needful shall be done. Ext.P3 petition was filed by him before the Special Court for Abkari Cases, Neyyattinkara. Nothing further appears to have been done.

3. The petitioner has rushed to this Court with the

grievance that the trial against him should not go on before the further investigation is conducted as agreed to in Ext.P3. Seeing that, no positive action did come forth, the petitioner filed this writ petition to request this Court to order further investigation into the matter.

4. The 2nd respondent appears to take the stand that the Superintendent of Police Vigilance has no authority to conduct or order to conduct a further investigation under Sec.173(8) of the Cr.P.C. The 3rd respondent who had appeared in person before this Court raised a grievance that though he felt that a further investigation has to be conducted, no further investigation has been conducted by the Department.

5. Be that as it may, the learned Public Prosecutor today submits that the Assistant Excise Commission has already ordered that steps must be taken to get a further investigation conducted in the matter. A copy of the order dated 26/2/07 is also placed before this Court.

6. Having considered all the relevant inputs, I am satisfied that all further controversy can be avoided by directing a further investigation under Sec.173(8) of the Cr.P.C. in the matter. The 3rd respondent is certainly of opinion that such a further investigation is necessary. The order dated 26/2/07 passed by

the Assistant Excise Commissioner also indicates – though not in so many words that the Department also wants a further investigation to be conducted. The 2nd respondent has no objection in further investigation being conducted. I am satisfied that the interests of justice will be served ideally by directing a further investigation into the matter notwithstanding the inevitable delay which will result in the disposal of the case which stands at the stage of 313 examination now.

7. In the result, this writ petition is allowed. A further investigation under Sec.173(8) of the Cr.P.C. shall be conducted into Crime No.35/98 of Akaravila Excise Range. Such further investigation shall be conducted personally by a superior official of the Excise Department not below the rank of Assistant Excise Commissioner. Necessary directions to this effect shall be issued by the Excise Commissioner within a period of 15 days with a copy to the petitioner. The learned Public Prosecutor shall communicate these directions to the Excise Commissioner forthwith. Issue copy to the learned Public Prosecutor.

Sd/-
(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge